

Sec. _____. NAC 645A is hereby amended by adding a new section thereto to read as follows:

In the absence of written escrow instructions or an agreement providing otherwise, money deposited in escrow shall be held in trust for the person on whose behalf the deposit is made and must be returned to such person upon his request.

Sec. _____. NAC 645A is hereby amended by adding a new section thereto to read as follows:

1. Escrow agencies shall deposit all funds held in trust in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts," and shall take all steps necessary to inform the depository institution of the purpose and identity of the accounts. Escrow Agency trust accounts shall be maintained only in financial institutions approved by the commissioner of mortgage lending.

2. Every escrow agency shall maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records of the matter, including checkbooks, canceled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property of a client, and make such records available to the financial institutions division for inspection upon request.

3. A financial institution shall be approved as a depository for escrow agency trust accounts if it files with the mortgage lending division an agreement, in a form provided by the mortgage lending division, to report to the commissioner of mortgage lending whenever any properly payable instrument is presented against an escrow agency trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The mortgage lending division shall annually publish a list of approved financial institutions. No trust account shall be maintained in any financial institution that does not agree to so report. Any such agreement shall apply to all branches of the financial institutions and shall not be canceled except upon thirty days notice in writing to the mortgage lending division.

4. The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(a) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(b) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the escrow agency, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

5. Reports under paragraph 4 shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against

insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

6. Every escrow agency shall, as a condition of maintaining its escrow agency license, be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(a) Certification of compliance with this Rule and consent shall be acknowledged as part of every escrow agency's annual licensing form. A member shall immediately file with the mortgage lending division an updated certificate of compliance and consent upon:

(1) opening of any trust account with a financial institution; or

(3) the utilization of any trust account for which there is no certification and consent on file with the mortgage lending division for said escrow agency.

7. Nothing herein shall preclude a financial institution from charging a particular escrow agency for the reasonable costs of producing the reports and records required by this Rule.

8. A financial institution shall not be liable for damages to any person or entity for any erroneous overdraft report filed in good faith or for the unintentional failure to comply with this Rule.

9. For purposes of this Rule:

(a) "Financial institution" includes any federally insured bank, savings and loan association, credit union, savings bank, and any other federally insured institution located in this state that accepts for deposit funds held in trust by escrow agencies.

(b) "properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this state.

10. All escrow agencies shall meet the certification and consent requirements of this rule within 60 days of the effective date of this Rule or of becoming a licensed escrow agency. Licensed escrow agencies who fail to meet the requirements of this Rule shall be notified of their non-compliance, in writing, by the mortgage lending division. Upon the expiration of forty-five days from the date the financial institutions division sends the escrow agency notice of non-compliance, the mortgage lending division shall commence disciplinary proceedings against such escrow agency pursuant to NRS 645A.090.